

JUDGES' CRIMINAL JUSTICE/MENTAL HEALTH LEADERSHIP INITIATIVE

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newsletter

Spring 2006

The Role of the Judge in Treatment Monitoring

Commenting on the opening of the Brooklyn Mental Health Court, the first of its kind in New York State, Chief Judge Judith S. Kaye stated that the new court “offers judges the option of providing individuals with a mental illness the specialized attention they need, while protecting public safety.” Certainly balancing public safety against the needs of the defendant, critical in all problem-solving courts, is most complex in mental health courts. Judicial monitoring plays a vital role in that balance.

Although oversight of defendants by a judge is a common element of problem-solving courts, its goals are not always the same. For example, in domestic violence courts, judicial monitoring seeks to preserve public peace and insure victim safety. In drug treatment courts, the main role of the judge is to track a chemically dependent defendant’s progress through an 18–24 month residential treatment program, in turn using rewards and sanctions if necessary. In mental health courts, the judge’s role, although borrowing themes from other courts, is more subtle and nuanced. This is true because of the variety of criminal behavior presented to the court as well as the range of diagnoses and treatment options available. The success of judicial monitoring in protecting public safety is, therefore, a labor intensive exercise requiring frequent court appearances, continuous listening and engagement of each individual.

In Brooklyn, defendants entering treatment are initially required to appear in court weekly. This re-enforces the court’s authority, with a secondary effect of allowing the defendant to see the progress of others in court. As the defendant makes progress toward recovery, his/her appearances become less frequent.

Listening, a requirement for any judge in any court, takes on greater importance in the judge’s role as treatment monitor. It includes listening not only to the defendants, but also to their case managers, service providers, and sometimes their families. The information gained from listening assists in the decision-making critical to successful

monitoring by the judge, both to keep defendants on track and, as important, to limit the consequences of failure.

Finally, every defendant is encouraged to speak in court, or at the bench, wherever he or she feels most comfortable. It is important to remember that each person appearing before the judge is an individual. Personality must be considered

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Message from the Co-Chairs

As Co-Chairs of the Judges’ Criminal Justice / Mental Health Leadership Initiative (JLI), we are proud to lead the JLI into an exciting third year. We are pleased to announce that the Conference of Chief Justices (CCJ) issued a resolution supporting the JLI and its activities at its midyear meeting January 18, 2006.

We believe that CCJ’s support will be crucial to the development of the JLI’s Statewide Leadership Initiatives, which will identify and assist six state teams, each established and led by a chief justice of that state’s supreme court, to address issues at the intersection of the criminal justice and mental health systems at a statewide level.

We are encouraged by CCJ’s interest in the JLI, and with input from the recently assembled JLI Advisory Group, hope to continue developing and implementing new resources to support the essential work of judges working to improve the response to people with mental illness in the criminal justice system and promote the goals of the President’s New Freedom Commission on Mental Health System Reform. As the Co-Chairs of this initiative, we renew our commitment to its goals and commend GAINS and CSG for their work.

Hon. Evelyn Stratton

Associate Justice, Supreme Court of Ohio

Hon. Steven Leifman

Associate Administrative Judge, Miami-Dade County Court Criminal Division

funding updates

Funding for the Mentally Ill Offender Treatment and Crime Reduction Act (MIOTCRA) will soon be available through the U.S. Department of Justice, Bureau of Justice Assistance. The program, which received \$5 million in startup funding for FY 2006, will make grants available to states and counties to design and implement collaborative efforts between criminal justice and mental health systems. In early April, the Bureau of Justice Assistance will solicit applications for 6 implementation grants and 12 planning grants; a number of planning grant recipients will also be eligible for implementation funding. For more information on the grant solicitation process, please visit: www.ojp.usdoj.gov/BJA/funding/current-opp.html.

Funding for this program for 2007 is currently being considered in Congress. Many state and community leaders are contacting their Members of Congress to help ensure continued funding. Representatives Jim Ramstad (R-MN) and Ted Strickland (D-OH) and Senator Mike DeWine (R-OH) are leading the effort to support MIOTCRA. For more information on the funding status of MIOTCRA, please visit: consensusproject.org/infocenter/legislation/.

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and the judge, in his or her monitoring role, should try to get to know the joys, hopes, grief and anxieties, of each individual. Engagement is a common human act and no one likes to disappoint a person with whom he or she is engaged. In these ways, the mental health court judge can effectively provide for the defendant's needs and keep the community safe. ■

Judge Matthew J. D'Emic

Kings County (NY) Supreme Court / Brooklyn Mental Health Court

new resource for judges

Judges' Leadership Initiative Website

The JLI is pleased to announce its upcoming website, <http://consensusproject.org/JLI>, which will be available in early April. The website will provide judges with media, announcements, materials, and other resources specific to criminal justice/mental health issues. The website will be unveiled at the National GAINS conference, April 5–7, in Boston, MA. Judges in attendance will be able to explore the new site at workstations in the conference resource room.

<http://consensusproject.org/JLI>

Resources from GAINS TAPA and The Consensus Project

➤ *The Advocacy Handbook: A Guide for Implementing Recommendations of the Criminal Justice / Mental Health Consensus Project*

The Advocacy Handbook: A Guide for Implementing the Recommendations of the Criminal Justice/Mental Health Consensus Project provides practical, easy-to-follow strategies for advocates who want to improve the response to people with mental illness who are in contact with the criminal justice system. Coordinated by CSG, the Advocacy Handbook reflects a shared effort among the nation's leading mental health organizations, including the NAMI, the National Mental Health Association (NMHA), the National Association of State Mental Health Program Directors (NASMHPD), the Bazelon Center for Mental Health Law, and the Criminal Justice / Mental Health Consensus Project. The Advocacy Handbook is available online at www.consensusproject.org/advocacy/index.

For more information, contact Hope Glassberg at 212-482-2320, hglassberg@csg.org.

➤ *Making Jail Diversion Work in Rural Communities: Easy Access Net/Tele Conference*

Mental illness is prevalent in rural communities at rates similar to urban areas, yet treatment services are often scarce and difficult to access, particularly within the criminal justice system. Jail diversion can be challenging to implement, as most of the existing program models were developed in urban settings where treatment and other community supports are more accessible. This net/tele conference featured presentations on successful models of rural diversion by Colleen Chamberlain of the Brown County (OH) Board of Alcohol, Drug Addiction, and Mental Health Services; Amy Forsyth-Stevens of the Mental Health Association of the New River Valley (VA); and Victoria Huber Cochran of the Virginia State Mental Health Board. The presentation and the audio replay of the net/tele conference are available at www.gainscenter.samhsa.gov/html/resources/presentations.asp.

For more information, call GAINS TAPA at 866-518-8272.

What the Research Says...

Highlights from recent articles and publications:

The Second Generation of Mental Health Courts

Redlich, A., Steadman, H.J., Monahan, J., Petrila, J., & Griffin, P.A. (2005). *Psychology, Public Policy, and Law* 11(4): 527-538.

This article compares 8 previously described courts with 7 newer courts not previously described in the psycholegal literature. The authors identify 4 dimensions distinguishing first- from second-generation courts: the acceptance of felony versus misdemeanor defendants, pre- versus post-adjudication models, the use of jail as a sanction, and the type of court supervision. The 4 dimensions are interdependent in that the acceptance of more felony cases contributes to the rise in processing cases post-adjudication, using jail as a sanction, and more intensive supervision. Potential reasons for the evolution of a second generation are discussed.

Voluntary, but Knowing and Intelligent? Comprehension in Mental Health Courts

Redlich, A. (2005). *Psychology, Public Policy, and Law* 11(4): 605-619.

This article examines the issue of comprehension of court processes among mental health court participants. Although participation in such courts is voluntary, it is unknown whether decisions to enter mental health courts are made knowingly and intelligently. The ability to make these decisions is important given that mental health courts are informal (and thus may lack built-in safeguards against constitutional violations) and given their rapid rate of growth. Research on other types of legal competencies suggests there may be a substantial number of mental health court participants who do not fully comprehend court processes and requirements. Furthermore, the level of comprehension at entry may predict future success or failure in the court. Thus, for both legal and practical

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Spotlight On...



Judge Herbert Donaldson, San Francisco Behavioral Health Court

In 2002, San Francisco created Behavioral Health Court, an experimental foray into the world of mental health courts. Shortly after the court was designed, retired Judge Herbert Donaldson was appointed to preside over the court. Judge Donaldson is a longtime San Francisco resident who has been practicing law since 1956. His fairness and compassion for people with mental illness was well known at the Hall of Justice long before he took the bench in Behavioral Health Court. In 2004, he received the Rose Elizabeth Bird Award from the California Public Defender's Association.

Judge Donaldson was well suited to serve on the Behavioral Health Court because of his appreciation of the plight of people with mental illness in the criminal justice system and his willingness to employ an innovative approach to address the problem. For over three years, he molded the Court into a successful mechanism for connecting individuals with mental illness to needed treatment services in the community, and negotiating them out of the criminal justice system for good.

Under Judge Donaldson's leadership, the San Francisco court was established as a model for other programs seeking to provide gender-specific services to female offenders. San Francisco was recently awarded a Federal grant from the Substance Abuse and Mental Health Services Administration to target the needs of women in Behavioral Health Court.

During his time presiding over the court, Judge Donaldson became active in promoting the concept of collaborative justice for offenders with mental illness. In the last three years, he has made every effort to advertise the court by meeting with city officials, attending conferences, making appearances on local radio stations, and granting interviews to local news papers. In October 2005, he published an article in *San Francisco Medicine Magazine* entitled "San Francisco's Behavioral Health Court: On the Cutting Edge."

In January of 2006, Judge Donaldson handed the court over to the Honorable Judge Mary Morgan, the current presiding judge of the Superior Court Criminal Division. Because of his persistence and patience, the court has now become an integrated part of the court system at the Hall of Justice in San Francisco. With added funding, the court will hopefully expand and strengthen in the months and years to come.

Although the court moves on without Judge Donaldson, the process is decidedly infused with his personality and his sense of fairness. In keeping with his passion for the issue, he will be working with Deputy Public Defender Jennifer Johnson to form a nonprofit organization designed to promote policy on mental health courts and to recruit retired California judges who can, like Judge Donaldson, add depth and experience to the growing mental health court movement.

reasons, the issue of mental health court comprehension among its participants is crucial.

Outcomes of Mandated and Non-Mandated New York City Jail Diversion for Offenders with Alcohol, Drug and Mental Disorders

Broner, N., Mayrl, D.W., & Lansberg, G. (2005). *The Prison Journal* 85(1) 18–49.

This study examined 175 jail detainees with mental illness and substance use disorders at baseline, 3 months, and 12 months through a quasi-experimental comparison design. The study examined the effect of diversion, treatment, and individual characteristics on criminal justice, mental health, substance use, and life satisfaction outcomes. The intervention group included nonmandated and mandated diversion tracks. The comparison participants met diversion acceptance criteria but underwent standard criminal justice processes. Main findings included that mandated diversion clients were likely to have spent less time in prison and more time in the community, to have been linked to residential and outpatient treatment and received more treatment, and to

have decreased drug use. However, those who did not perceive themselves coerced and had insight into their mental illness received more treatment regardless of diversion condition. Although mandated diversion was found effective for some outcomes, individual characteristics, treatment, and diversion in general significantly improved.

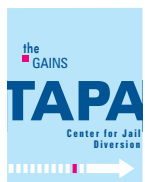
Building Trust and Managing Risk: A Look at a Felony Mental Health Court.

Fisler, C. (2005). *Psychology, Public Policy, and Law* 11(4): 587–604.

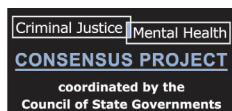
This article describes a felony mental health court in Brooklyn, NY, and explores the decision to focus on felonies, including the planning team's experiences with problem-solving courts and the effort to balance a fair court process with effective, but lengthy, treatment mandates. Several ways are described by which the court and its partners manage potential public safety risks posed by felony offenders: thorough evaluations of offenders, individualized treatment plans, shared decision making, candid communications between the court and its partners, and close judicial monitoring. The ongoing program evaluation of the court is described and areas for future research for felony mental health courts are suggested.

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on the docket

National Judicial College

Reno, NV
Practical Approaches to Substance Abuse Issues
April 24, 2006
Co-Occurring Mental and Substance Use Disorders
September 11, 2006
Managing Cases Involving Persons with Mental Disabilities
October 18, 2006
www.judges.org

National Consortium for Racial and Ethnic Fairness in the Courts

18th Annual Meeting
Hotel Albuquerque at Old Town
Albuquerque, NM
April 25–28, 2006
www.consortiumonline.net

National Association for Court Management

2006 Annual Conference
Marriott Harbor Beach Resort
Ft. Lauderdale, FL
July 9–13, 2006
www.nacmnet.org

American Bar Association

2006 ABA Annual Meeting – Judicial Division
Sheraton Waikiki
Honolulu, Hawaii
August 3–7, 2006
www.abanet.org

National Association of Women Judges

28th Annual Conference
Rio All-Suites Hotel
Las Vegas, NV
October 4–8, 2006
www.nawj.org